striction is merely to prevent an abuse; but if every religious denomination were inclined to make presents of its books to any public corporation connected with public instruction, it would be extraordinary if the corporation should be found lacking in authority to receive them. There is no policy of the law that would exclude from any public library any book which is not vicious and immoral in aim or tendency.

Another point not touched upon in the principal case is of interest, namely: Conceding that the authority of the corporation to execute the trust is doubtful, can the heirs raise the question? It has been decided that if the trust is valid in itself, as this clearly was, being a charity, only the state and not the heirs or other private parties could inquire into or contest the right of the corporation as trustee: *Wade* v. *Colonization Society*, 15 Miss. 663. And see *Vidal* v. *Girard's Executors*, 2 How. 61, 191; *Kinnaird* v. *Miller*, 25 Grat. 107; *First Congregational Society* v. *Atwater*, 23 Conn. 34; *Jackson* v. *Phillips*, 14 Allen 539; *Hathaway* v. *Sackett*, 32 Mich. 97. T. M. C.

Supreme Court of Rhode Island.

CHARLES W. LYNCH *v.* JOHN FALLON.

A broker employed by A. to negotiate an exchange of properties between him and B., cannot recover commissions of B., although after the exchange was effected he expressly promised to pay.

ASSUMPSIT heard by the court, jury trial being waived.

Henry B. Whitman, for plaintiff.

B. N. & S. S. Lapham, for defendant.

The opinion of the court was delivered by

DURFEE, C. J.—This is an action of assumpsit to recover $2500 for commissions for the plaintiff's services as a broker in negotiating an exchange of real estate. The two estates exchanged were a hotel estate, belonging to the defendant, situated in Worcester, and valued by the defendant at $125,000, on one side, and a tract of land belonging to the West Elmwood Land Company, situated in Providence, on the other side. There was, subject to mortgages, an even exchange. The plaintiff claims that the defendant made him an express promise to pay him the regular commissions before the exchange, and after the exchange promised to pay him $2500. The defendant denies this. We think the agreement is proved. The defendant contends that, if proved, it is not binding upon him, the plaintiff having been previously employed by the West Elmwood Land Company to sell their land, and being in their employ throughout the transaction. We think this is proved. The plaintiff has

in fact presented a bill to the company or its representatives for services in effecting the exchange.

The general rule is, that though a person may be entitled to pay from both parties to a sale or exchange where he acts merely as a middleman to bring them together (*Rupp* v. *Sampson*, 16 Gray 398; *Siegel* v. *Gould*, 7 Lans. 177), he cannot be allowed to serve as an agent or broker for both, because in such case there is a necessary conflict between his interest and duty, and he is exposed to a temptation to sacrifice the interests of one or both of his principals to secure his double commissions. As agent for the vendor, his duty is to sell at the highest price; as agent for the vendee, his duty is to buy for the lowest; and even if the parties bargain for themselves, they are entitled to the benefit of the skill, knowledge, and advice of the agent, and, at the same time, to communicate with him without the slightest fear of betrayal, so that it is hardly possible for him to be true to the one without being false to the other. The claim to charge commissions to both parties is so unreasonable that it cannot be justified by any custom or usage: *Farnsworth* v. *Hemmer*, 1 Allen 494; *Walker* v. *Osgood*, 98 Mass. 348; *Pugsley* v. *Murray*, 4 E. D. Smith 245; *Everhart* v. *Searle*, 71 Penn. St. 256; *Raisin* v. *Clark*, 41 Md. 158; *Schwartze* v. *Yearly*, 31 Md. 270; *Morison* v. *Thompson*, Law Rep. 9 Q. B. 480.

It is intimated in *Pugsley* v. *Murray*, 4 E. D. Smith 245, that the rule only applies where the broker conceals the double employment; but other cases rest the invalidity of the contract upon broad grounds of public policy, and hold that it cannot be enforced even against a party who, knowing that the broker is already employed, promises expressly to pay him for his services. Thus in *Everhart* v. *Searle*, 71 Penna. St. 256, the defendant, knowing the plaintiff had the property for sale, agreed to pay him $500 for assisting him to negotiate a purchase of it, and it was held that the plaintiff could not recover on the contract. "The transaction," say the court, "is to be regarded as against the policy of the law, and not binding upon a party who has a right to object to it."

In *Raisin* v. *Clark*, 41 Md. 158, it was held that the broker could not recover of the party who last employed him, even though the double employment was known to both parties, and the party who first employed him had paid his commission. The court say: "The rule forbids the court to entertain an action founded upon such a contract." * * * "It is perhaps possible for the same agent

to serve both parties to such a transaction honestly and faithfully, but it is very difficult to do so, and the temptation to do otherwise is so strong that the law has wisely interposed a positive prohibition to any such attempt." And see Story on Agency, §§ 210, 211.

In the case at bar we do not find that the West Elmwood Land Company was informed by the plaintiff of his employment by the defendant. The representatives of the company continued to confer freely with him, and raised the price of their land, which they held at $50,000, and which they had previously offered through the plaintiff at fifteen cents a foot, to twenty-five cents a foot, so as to bring it up to or near the price which the defendant had put upon his estate. The plaintiff, for anything that appears, co-operated in this; he says he told the defendant it was a nice piece of land, good to build on; he does not say he ever told the defendant that the price was enormously inflated. The case shows how easy it is for an agent of both parties to become, either consciously or unconsciously, a mere instrument in the hands of the more adroit and sharp-witted party in hoodwinking the other and decoying him into a disadvantageous bargain. It indicates what temptations and facilities such a double agency presents for unconscionable concealments and misrepresentations, and how dangerous it would be even if it were exercised with the consent of both parties; and certainly without such consent, freely and fully given, the law ought not to tolerate it for a moment.

We give the defendant judgment for his costs.

That no man can serve two masters is as well established in the common law as in any higher code.

Accordingly, one who undertakes it is not allowed to recover compensation from *both* parties for whom he was acting. This is clear. By engaging to serve the second he forfeits his right to recover compensation from the one who *first* employed him; for he has placed himself in a position where he is unable to give his first employer all the skill, knowledge, discretion and experience which by his contract of agency he was bound to furnish: *Walker* v. *Osgood*, 98 Mass. 348. Not only so, but he acquires no right to compensation from his *second* employer, although the latter knew when he engaged him that he was already under a prior contract with the first principal. So far as he is concerned, it might be thought that if he knew the agent was already in the employ of, and interested for the opposite party, and chose to confide in him, notwithstanding his adverse interests, he ought not subsequently to refuse to pay him the compensation stipulated on his part, especially if there has been no actual fraud or deception on the part of such double agent. But it should be remembered that such arrangements are not illegal because of actual fraud in the particular case, but because all contracts which are opposed to open, up-

right and fair dealing are contrary to public policy and void. Any contract, therefore, by which one is placed under a direct inducement to violate the confidence reposed in him by another, is of this character. It is the duty of an agent of a seller to get the highest price that can be obtained in market, and if he subsequently engage with an expected purchaser to receive a commission from him on the purchase, he is under an inducement to effect a sale to him on lower terms than might have been obtained from others, because thereby he would secure a commission from both parties. He is thus placed under a direct temptation to deal unjustly with the first principal. If such an arrangement can ever be valid, therefore, it can be only when the double agency is known and approved by *both* principals. See *Price* v. *Wood*, 113 Mass. 133.

And so careful is the law to protect parties from imposition that if a person engages his friend and confidential adviser to examine property which he contemplates purchasing, and give his opinion upon it *gratuitously*, and he does so, and thus a sale is effected, such friend and adviser cannot afterwards recover of the vendor for accomplishing such sale, although he has expressly agreed to pay him. Contracts to pay "poundage for recommending customers to buy" are odious in the law: *Bollman* v. *Loomis*, 41 Conn. 581 (1874); *Wyburd* v. *Stanton*, 4 Esp. 179.

Not only is an agent debarred from *recovering commissions* from such second principal, but any arrangement he may make with him in consideration of such a double agency cannot be enforced. Therefore, if an agent empowered to sell agrees with an expected buyer to introduce him to the vendor and aid in promoting the sale, if the buyer will subsequently sell him part of the property at an agreed price, such agreement is invalid, and cannot be enforced by the agent against the buyer after he has purchased the whole estate: *Smith* v. *Townsend*, 109 Mass. 500.

So obnoxious to the law is this species of double dealing that not even a usage among brokers to charge double commissions in such cases will be of any avail. A custom or usage to be legal and valid must be reasonable and consistent with good morals and sound policy, so that parties may be supposed to have made their contracts with reference to it. If a valid usage is shown to exist it then becomes the law by which the rights of the parties are to be regulated and governed. But a usage to charge double commissions is wanting in these essential elements. It would be unreasonable, because, if established, it would operate to prevent the faithful fulfilment of the contract of agency. It would be contrary to good morals and sound policy, because it tends to sanction an unwarrantable concealment of facts essential to a contract, and operates as a fraud on parties who had a right to rely on the confidence reposed in their agents: *Farnsworth* v. *Hemmer*, 1 Allen 494; *Raisin* v. *Clark*, 41 Md. 158.

It is intimated in the case of *Lynch* v. *Fallon*, that a person could not act as agent for both parties, even though such double agency were known and assented to at the time by both parties, and both agree that each shall pay a portion of the fees. But this may be questionable when everything is fair and and understood by all parties. See *Joslin* v. *Cowee*, 56 N. Y. 626 (1874); *Rowe* v. *Stevens*, 53 N. Y. 621, affirming same case in 3 Jones & Sp. 189; *Adams Mining Co.* v. *Senter*, 26 Mich. 73; *Fitzsimmons* v. *Southern Express Co.*, 40 Geo. 330. An agent to purchase cannot, ordinarily, buy of himself (as is well known), and *vice versa*; but if such a transaction is fully assented to after-

wards by the principal, no doubt it may be done, and thus he will ratify the sale; and *a fortiori*, if it was expressly assented to before the same was undertaken to be done by the agent.

But without any assent or ratification by the principal, not only is the principal not liable to the agent for his commission, but he may avoid the contract *as against the other party*, although he may be as innocent as himself. The medium through which they have been brought together is tainted, and each party may repudiate the transaction if he does so in due time. See *Fish* v. *Lesor*, 69 Ill. 394; *Panama Telegraph Co.* v. *India Rubber, &c., Co.*, Law Rep., 10 Ch. App. 515 (1875), a very important case on this subject.

And even if the principal has ratified the contract made by a double agent, so far as *the adverse party is concerned*, it does not necessarily follow that he is liable to the fraudulent agent for his commissions. They stand on different grounds: *Solomon* v. *Pendor*, 3 Hurlst. & C. 639 (1865), where an agent to sell the defendant's land sold it to a company in which he was himself interested as a shareholder; and it was held that although the defendant had concluded to abide by the sale, he was notwithstanding not liable to the agent for his commissions. See the general subject treated in a masterly manner in the notes to *Fox* v. *Macreth*, 1 Lead. Cas. in Equity 115.

EDMUND H. BENNETT.

Supreme Court of the United States.

PETER DOYLE, SECRETARY OF STATE OF WISCONSIN, *v.* THE CONTINENTAL INS. CO. OF THE CITY OF NEW YORK.

The decision in *Home Insurance Co.* v. *Morse*, 20 Wallace 445, reaffirmed that an agreement to abstain in all cases from resorting to the courts of the United States is void as against public policy, and that a statute of the state of Wisconsin requiring such an agreement is in conflict with the Constitution of the United States, and void.

A state has the right to impose conditions to the transaction of business within its territory by an insurance company chartered by another state, which are not in conflict with the constitution or laws of the United States.

It has the right entirely to exclude such corporation from its territory, or having given a license, to revoke it, in its discretion, for good cause, or without cause.

The motive or intention of the state in so doing is not open to inquiry. The company has no constitutional right to transact its business in such state, and hence its exclusion therefrom for whatever cause violates no constitutional right.

The legislature of the state of Wisconsin enacted that if any foreign insurance company should transfer a suit brought against it from the state courts to the federal courts, it should thereupon become the duty of the secretary of the state of Wisconsin to revoke and cancel its license to do business within the state. An injunction to restrain the secretary of state from so doing because such transfer is made cannot be sustained. Having no constitutional right to do business in that state, the suggestion that the intent of the legislature is to accomplish an illegal result, to wit, the prevention of a resort to the federal courts, is immaterial.

The right of exclusion belongs to the state, and the means by which it accomplishes that result are not the subject of judicial inquiry.